

ILLINOIS POLLUTION CONTROL BOARD
October 28, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-65
)
)
 NOBLE and GENEVA STARNES,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Goodman):

On May 20, 1976, the Board granted Motions for Interlocutory Appeal filed by both Complainant and Respondents and ordered the parties to submit briefs on specified questions. Complainant's Brief was submitted on June 21, 1976, and Respondents' Brief was submitted on June 23, 1976.

The questions which the Board ordered the parties to address are the following:

1. Whether the Hearing Officer erred by striking most of Complainant's Requests for Admission of Facts;
2. Whether the Hearing Officer erred in ruling on Respondents' Objections to Interrogatories and Motion to Strike without allowing Complainant the time to respond as provided in Procedural Rule 308(c);
3. Whether the Hearing Officer erred in striking certain of Complainant's Interrogatories;
4. Whether the Hearing Officer erred in overruling several of Respondents' Objections to Complainant's Interrogatories.

The Board has considered the Briefs submitted by the parties. On March 30, 1976, the Hearing Officer struck 9 out of 10 of Complainant's Requests for Admission of Facts. The Board hereby overrules the Hearing Officer's Order striking these Requests. The Board finds that the requests are for "specified relevant facts" within the meaning of Procedural Rule 313. The Board notes that Respondents may deny, qualify or plead inability to answer if they find such responses appropriate. If Respondents plead inability to answer, they shall show in a sworn statement that they have made reasonable inquiry and are unable to obtain the information without substantial trouble and expense. The Board finds that these Requests aid in discouraging unnecessarily protracted hearings (See In the Matter of Admissions and Transcripts, R71-21, 3PCB83).

As to the Interrogatories, the Board hereby upholds the Hearing Officer's ruling as to Interrogatory No. 40. The Board overrules the Hearing Officer's ruling as to Interrogatories Nos. 20, 21, 33, 34, 35, 36, 37, 38 and 39. As to Interrogatory No. 39, the Board finds the Hearing Officer's ruling inappropriate because Respondents filed no objection. As to Interrogatories Nos. 20 and 21, 33-38, the Board finds all of these Interrogatories relevant to its consideration of Section 33(c) of the Act. The Board notes that, as pointed out in Respondents Brief, the trend in discovery has been away from drawing sharp lines between facts and opinions. Furthermore, the Board notes that financial status is relevant to a determination of penalty (See, e.g., EPA v. Aluminum Processing Corp., 7PCB335 (1973)) and that, therefore, Interrogatories 33-38 seek relevant, discoverable information. The Board upholds the Hearing Officer's Order in overruling Complainant's objections to Interrogatories 15-19, 26, 29, 31, and 32. In addition, the Board finds that the Hearing Officer erred in striking the word "unnamed" from Complainant's Request for Admission and Interrogatories. We agree with Complainant's contention that it is impossible to name waters that have no names and that the word does not render the questions vague.

We furthermore note that the Hearing Officer did err in ruling on Respondents' Objections to Interrogatories and Motion to Strike without allowing Complainant the time to respond as provided in Procedural Rule 308(c). However, such error has been cured by the Board's Order herein.

IT IS SO ORDERED.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 28th day of October, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board